



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF WATER POLLUTION CONTROL
401 CHURCH STREET
L & C ANNEX 6TH FLOOR
NASHVILLE TN 37243-1534

July 30, 2007

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RECEIPT #7099 3400 0014 0976 2346

John Trice
429 West Main Street
Lebanon, Tennessee 37087

Subject: DIRECTOR'S ORDER NO. WPC07-0161
JOHN TRICE
WILSON COUNTY, TENNESSEE

Dear Mr. Trice:

Enclosed is a Director's Order and Assessment of Civil Penalty issued by Paul E. Davis, Director of the Division of Water Pollution Control, under the delegation of Commissioner James H. Fyke. Read the Order carefully and pay special attention to the NOTICE OF RIGHTS section.

It is the Department's position that corporations, limited partnerships, limited liability companies, and other artificial entities created by law must be represented in any legal proceeding resulting from an appeal of this Order and Assessment by an attorney licensed to practice law in the State of Tennessee. Non-attorneys may participate in any such proceedings to the extent allowed by law.

If you or your attorney has questions concerning this correspondence, contact me at (615) 532-0670.

Sincerely,

Vojin Janjic
Manager, Enforcement and Compliance Section

cc: DWPC-EFON-JEH
DWPC-NCO-NRS-WML
DWPC-NCO-E&C

**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

IN THE MATTER OF:)	DIVISION OF WATER
)	POLLUTION CONTROL
)	
)	
JOHN TRICE)	
)	
)	
)	
RESPONDENT)	CASE NO. WPC-07-0161

DIRECTOR'S ORDER AND ASSESSMENT

NOW COMES Paul E. Davis, Director of the Tennessee Division of Water Pollution Control, and states:

PARTIES

I.

Paul E. Davis is the duly appointed Director of the Tennessee Division of Water Pollution Control (hereinafter the "director" and the "division" respectively) by the Commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "commissioner" and the "department" respectively).

II.

John Trice (hereinafter the "Respondent") is the owner/developer of an approximately 93-acre residential development, the Woodland Ridge Subdivision, located on Cedar Grove Road in Wilson County, Tennessee (hereinafter the "site").

Service of process may be made on the Respondent at 429 West Main Street, Lebanon, Tennessee 37087.

JURISDICTION

III.

Whenever the commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) §69-3-101 *et seq.*, the Water Quality Control Act, (hereinafter the “Act”), has occurred, or is about to occur, the commissioner may issue a complaint to the violator and may order corrective action be taken pursuant to T.C.A. §69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. §69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. §69-3-116 of the Act. Department rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. §69-3-105 and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 1200-4-3 and 1200-4-4 (hereinafter the “Rule”). Pursuant to T.C.A. §69-3-107(13), the commissioner may delegate to the director any of the powers, duties, and responsibilities of the commissioner under the Act.

IV.

The Respondent is a “person” as defined at T.C.A. §69-3-103(20) and, as hereinafter stated, the Respondent has violated the Act.

V.

T.C.A. §69-3-108(b)(1), provides that it is unlawful for any person, except in accordance with the conditions of a valid permit, to carry out any activity which may result in the alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the State, including wetlands. These activities include, but are not limited to: the discharge of dredge or fill material, dredging, stream channel modifications, water withdrawals, wetlands alterations including drainage, and other construction activities which result in the alteration of the waters of the State. State permits for these activities are either §401 Water Quality Certifications or Aquatic Resource Alteration Permits. Additionally, pursuant to Rule 1200-4-7.03(38), "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

VI.

T.C.A. §69-3-108 requires a person to obtain a permit from the department prior to the alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state. Pursuant to T.C.A. §69-3-108, Rule 1200-4-7-.04 requires a person to submit an application prior to engaging in any activity that requires an Aquatic Resource Alteration Permit (ARAP) that is not governed by a general permit or a §401 Water Quality Certification. No activity may be authorized unless any lost

resource value associated with the proposed impact is offset by mitigation sufficient to result in no overall net loss of resource value.

FACTS

VII.

On November 18, 2005, the division conducted a site inspection and observed unauthorized alterations to existing jurisdictional wetlands. Approximately 6 acres of wetlands had been impacted due to construction activities occurring at the site.

VIII.

On November 21, 2005, the division issued a Notice of Violation (NOV) to the Respondent regarding the violations observed during the November 18, 2005, site investigation. The NOV instructed the Respondent to submit, within 30 days of receipt of the NOV, a delineation of the wetlands present at the site, a determination of the amount of impacted wetlands on site, and a plan to restore the altered wetlands to pre-disturbance conditions. The NOV further notified the Respondent that work in the wetland area should be suspended until the unauthorized alteration are resolved.

IX.

On December 19, 2005, the division received correspondence from the Respondent requesting a 90-day extension to submit the required wetland delineation and restoration plan.

X.

On December 28, 2005, the division issued correspondence to the Respondent denying the Respondents request for a 90-day time extension to submit the wetland delineation and restoration plan. The division notified the Respondent that the delineation and restoration plan should be submitted within 30 days of receipt of the correspondence.

XI.

On July 18, 2006, the division received the requested wetland delineation from the Respondent's consultant, Griggs & Maloney, Inc. The wetland delineation revealed that approximately 33.3 acres of wetlands were present at the site, and approximately 5.77 acres of those wetlands had been impacted due to construction activities occurring at the site. The wetland delineation did not contain any information regarding restoration activities, as required by the November 21, 2005, NOV.

XII.

On August 31, 2006, division personnel conducted a second site investigation and observed that additional alterations to jurisdictional wetlands present on site had occurred. These alterations consisted of the placement of fill material and mechanized land clearing for the construction of homes on site and impacted approximately 4 additional acres of jurisdictional wetlands, resulting in a condition of pollution.

XIII.

On September 1, 2006, the division issued a second NOV to the Respondent regarding the violations observed during the August 31, 2006, site investigation. The NOV instructed the Respondent to submit a restoration/mitigation plan within 30 days of receipt of the NOV. The plan was to include a description of all the impacts to jurisdictional wetlands occurring at the site, and a proposal to provide compensatory mitigation for any impacts. The NOV further requested that work be suspended in the wetland area until the unauthorized activities have been resolved.

XIV.

On October 4, 2006, the division received a revised wetland delineation and mitigation proposal plan from the Respondent's consultant. The revised delineation stated that approximately 27.9 acres of wetlands were present at the site, and approximately 9.6 acres of wetlands had been impacted at the site. The plan provided a mitigation proposal detailing the amount of wetland to be mitigated, however, the plan failed to provide specific information on depth of excavation, hydrological inputs, specifics on plantings, monitoring protocol and success criteria, long-term protection methods, or a timetable for proposed activities.

XV.

On October 13, 2006, the division notified the Respondent's consultant, via email, that additional information, referenced above, was needed regarding the mitigation proposal, received by the division on October 4, 2006.

XVI.

To date, the division has not received any additional information regarding the mitigation proposal, as requested on October 13, 2006.

VIOLATIONS

XVII.

By physically altering jurisdictional wetlands without authorization under an ARAP, and by failing to furnish information, the Respondent has violated T.C.A. §§69-3-108(a) and (b) and 69-3-114(b), which states:

T.C.A. §69-3-108 (a) and (b):

- (a) Every person who is or is planning to carry on any of the activities outlined in subsection (b), other than a person who discharges into a publicly owned treatment works or who is a domestic discharger into a privately owned treatment works, or who is regulated under a general permit as described in subsection (j), shall file an application for a permit with the commissioner or, when necessary, for modification of such person's existing permit.
- (b) It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:
 - (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state;
 - (2) The construction, installation, modification, or operation of any treatment works, or part thereof, or any extension or addition thereto;
 - (3) The increase in volume or strength of any wastes in excess of the permissive discharges specified under any existing permit;
 - (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;

- (5) The construction or use of any new outlet for the discharge of any wastes into the waters of the state;
- (6) The discharge of sewage, industrial wastes, or other wastes into water, or a location from which it is likely that the discharged substances will move into waters;

T.C.A. §69-3-114(b):

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in §69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the commissioner under this part.

XVIII.

By placing fill material into jurisdictional wetlands that resulted in a condition of pollution, the Respondent has violated T.C.A. §§69-3-114(a), as referenced below, and 69-3-114(b), as referenced above.

T.C.A. §69-3-114(a):

It shall be unlawful for any person to discharge any substance into waters of the state or to place or cause any substance to be placed in any location where such substances, either by themselves or in combination with others, cause any of the damages as defined in §69-3-103(22), unless such discharge shall be due to an unavoidable accident or unless such action has been properly authorized. Any such action is declared to be a public nuisance.

ORDER AND ASSESSMENT

XIX.

WHEREFORE, pursuant to the authority vested by T.C.A. §§69-3-107, 69-3-109, 69-3-115, and 69-3-116, I, Paul E. Davis, hereby issue the following ORDER and ASSESSMENT to the Respondent:

1. The Respondent shall, within THIRTY (30) DAYS of receipt of this Order, submit for division approval, a mitigation plan to provide compensatory mitigation for the 9.6 acres of impacted wetlands located on site. The mitigation plan shall incorporate the wetland delineation information obtained in the October 4, 2006, delineation performed by the Respondent's consultant, Griggs & Maloney, Inc. The mitigation plan shall include, but not be limited to, information on hydrological inputs, depths of excavation, information on specific plantings including species, size, spacing, monitoring protocol and success criteria, long-term protection methodology, and a timetable for the proposed activities. The mitigation plan shall be submitted to the manager of the division's Natural Resources Section (NRS) located at 401 Church Street, L&C Annex 7th Floor, Nashville, Tennessee 37243.
2. The Respondent shall, by December 31, 2007, complete all activities outlined in the approved mitigation plan, and notify the manager of the division's NRS of completion.
3. The Respondent is hereby assessed a CIVIL PENALTY in the amount of FORTY THREE THOUSAND FOUR HUNDRED DOLLARS (\$43,400.00).
 - a. The Respondent shall pay ELEVEN THOUSAND DOLLARS (\$11,000.00) to the division within THIRTY (30) DAYS of receipt of this Order.
 - b. The Respondent shall pay TEN THOUSAND FOUR HUNDRED DOLLARS (\$10,400.00) to the division within THIRTY (30) DAYS of

default, if, and only if, the Respondent fails to comply with Item 1 above in a timely manner.

- c. The Respondent shall pay TWENTY TWO THOUSAND DOLLARS (\$22,000.00) to the division within THIRTY (30) DAYS of default, if, and only if, the Respondent fails to comply with Item 2 above in a timely manner.

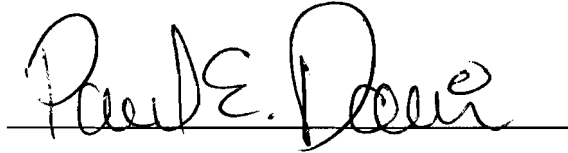
- 4. The Respondent shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

Further, the Respondent is advised that the foregoing Order is in no way to be construed as a waiver, expressed or implied, of any provision of law or regulations. However, compliance with the Order will be one factor considered in any decision whether to take enforcement action against the Respondent in the future. The director may, for good cause shown by the Respondent, extend for a fixed time period, the compliance dates contained within this Order.

To be eligible for this time extension, the Respondent shall submit a written request to be received in advance of the compliance date. The written request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay. The director will reply to the Respondent's request in writing. Should the Respondent fail to meet the requirement by the extended date, any associated CIVIL PENALTY shall become due THIRTY (30) DAYS thereafter.

Issued by the Director of the Division of Water Pollution Control on behalf of the
Commissioner of the Tennessee Department of Environment and Conservation on this

30th day of July, 2007.



Paul E. Davis, P.E.

Director, Division of Water Pollution Control

NOTICE OF RIGHTS

T.C.A. §§69-3-109 and 69-3-115, allow the Respondent to secure review of this Order and Assessment. In order to secure review of this Order and Assessment, the Respondent must file with the Office of General Counsel a written petition setting forth each Respondent's contentions and requesting a hearing before the Water Quality Control Board. The written petition should be sent to the Tennessee Department of Environment and Conservation, Office of General Counsel, at 401 Church Street, L&C Tower 20th Floor, Nashville, Tennessee 37243. The Respondent must file the written petition within THIRTY (30) DAYS of receiving this Order and Assessment.

If the required written petition is not filed within THIRTY (30) DAYS of receipt of this Order and Assessment, the Order and Assessment shall become final and will be considered as an agreement to entry of a judgment by consent. Consequently, the Order and Assessment will not be subject to review pursuant to T.C.A. §§69-3-109 and 69-3-115.

Any hearing of this case before the Water Quality Control Board for which a Respondent properly petitions is a contested case hearing governed by T.C.A. §4-5-301 *et seq.* (the Uniform Administrative Procedures Act) and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on its behalf to testify.

If the Respondent is an individual, the Respondent may either obtain legal counsel representation in this matter, both in filing its written petition and in presenting evidence at the hearing, or proceed without an attorney. Low- income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization.

Payments of the civil penalty shall be made payable to the "Treasurer, State of Tennessee," and sent to the Division of Fiscal Service, Tennessee Department of Environment and Conservation, 14th Floor L&C Tower, 401 Church Street, Nashville, Tennessee 37243. All other correspondence regarding this matter should be sent to Paul E. Davis, Director, Division of Water Pollution and Control, 6th Floor L&C Annex, 401 Church Street, Nashville, Tennessee 37243. Please write your case number on all payments and all correspondence concerning this matter.